Calendar No. 275

102D CONGRESS *1st Session*	SENATE	REPORT 102-190

900 SERVICES CONSUMER PROTECTION ACT OF 1991

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1579

OCTOBER 16 (legislative day, SEPTEMBER 19), 1991.—Ordered to be printed

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900 SERVICES CONSUMER PROTECTION ACT OF 1991

OCTOBER 16 (legislative day, SEPTEMBER 19), 1991.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1579]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1579) to provide for regulation and oversight of the development and application of the telephone technology known as pay-per-call, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The purposes of the bill are to provide for oversight and regulation by the Federal Trade Commission (FTC) and Federal Communications Commission (FCC) of the development and application of the telephone technology known as pay-per-call services.

BACKGROUND AND NEEDS

900 SERVICES

Pay-per-call services give callers access to a variety of information services by calling a 10-digit number whose prefix is usually 900 or 700.[1] When consumers call a 900 number, they are assessed a charge in addition to the regular long distance charges. Generally callers are either charged a flat fee per call or charged by the minute. Charges can be as high as $25 per call or $10 per minute.

These numbers are used to: provide information (like stock quotes, sports data, and data bases); conduct polls (call one number

[1] Throughout this report the term "900 numbers" generally refers to pay-per-call services.

for yes and another number for no); provide legal and other advice; provide mass announcements (which play prerecorded messages); promote sweepstakes; sell goods; raise funds for charitable and political organizations; and provide "dating" services and group access bridging ("gab" lines or "party" lines). Approximately 60 percent of these services are considered entertainment; 20 percent are "live" services; 10 percent promote products and events; 5 percent are polling services; 2 percent are fundraising; and 3 percent are information services. *See Congressional Quarterly,* March 16, 1991, p. 666.

Most 900 services operate by the information service provider entering into a contract with a communications carrier (most often long-distance companies) to provide a particular service, like stock quotes. The local telephone company makes telephone lines available to the information service provider and also handles the billing and collection. The information service provider then advertises the service using print and/or broadcast media. When a consumer calls the stock quote 900 number, that consumer is then billed directly on his or her telephone bill. It is important to note that generally neither the local telephone company nor the long-distance company provides the information; the telephone company provides the telephone lines and billing but has traditionally not had control over the content.[2]

The 900 pay-per-call business, which began in the early 1980s, has developed into a $759 million industry and is projected to grow into a $1.6 billion industry by 1992. According to testimony presented at a Communications Subcommittee hearing held on 900 services on July 17, 1991, there are presently approximately 14,000 different pay-per-call programs available offered by an estimated 5,000 different information service providers. In addition, telephone sales have become an increasingly popular way to sell goods and services. Industry sources estimate that billions of dollars in sales are made over the telephone each year. Catalog sales and legitimate purchases by telephone are being made in increasing numbers, and consumers, for example, can purchase items and charge the purchase to their credit card accounts.

According to a 1991 State attorneys general report, "the recent growth of [the pay-per-call] industry has been attributed to the fact that it represents an inexpensive and relatively simple means of tapping into a highly profitable, nationwide market." This report also attributes the growth to divestiture, which has opened the telecommunications industry to more competition and expansion of services. Attorneys General Working Group, The 900 Report, Findings and Preliminary Recommendations, National Association of Attorneys General (NAAG) March 1991 (NAAG Report).[3]

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[2] Until recently, the Bell Operating Companies wee prohibited by the AT&T Consent Decree (Modification of Final Judgment) from providing information services, such as pay-per-call services. That restriction was recently lifted (*U.S.* v. *Western Electric Company*, Civil Action No. 82-0192, July 25, 1991). That decision is currently on appeal, and the effect of the decision has been stayed pending completion of the appellate process. However, should the decision be upheld on appeal and/or the stay lifted so that the Bell Operating Companies are permitted to provide pay-per-call services, it is the intention of the Committee that the Bell Companies be subject to the same requirements applied to all other pay-per-call service providers to the extent they provide or control the content of any information service.

[3] The Working Group consisted of Attorneys General from the States of Texas, Florida, Kansas, Missouri, New York, Pennsylvania, Tennessee, Washington, and Wisconsin.

In recent years, the increased usage of 900 numbers has resulted in many consumer complaints. Since January 1988, the FCC has received over 2,000 complaints, and the complaints are continuing. In November 1990, the FCC received 197 complaints and 309 complaints in June 1991. The most frequent complaints received by both the FCC and FTC concern false or deceptive disclosure of rates and products. Advertisements often fail to disclose the cost of calls to 900 numbers, or the cost of the call is printed in small illegible "mice" print. Some broadcast ads only state the cost of the call once or in slurred last-minute voice-overs, but repeat the 900 numbers frequently throughout the advertisement.

In some cases, callers are told to call an 800 number, only to get a recorded message to call a 900 number, but are never told that there will be a charge for calling the 900 number. Even where the price is disclosed, the ad may not state that the caller will be charged per minute. Some sweepstakes programs require consumers to call a 900 number to claim their prize, without disclosing the cost of the call.

The problems caused by 900 services are exacerbated by the fact that when consumers receive their monthly telephone bill, they have no idea who is billing them. The bill only shows the long-distance carrier—AT&T, MCI, or whichever company carried the call. This is not only lends legitimacy to the charge, because it looks as if it is that of an established long-distance company, but "the telephone, a common and necessary household utility, has been transformed into a credit purchasing tool" (NAAG report) by these practices.

CHILDREN

900 services aimed at children are particularly troubling. The FCC, the FTC, and the NAAG report all suggest special treatment of 900 services aimed at children. Three of the five suits brought by the FTC against 900 service providers involved services aimed at children. One service targeted children 8 years old and younger. Both the FCC and the FTC recommend a special preamble for children's programs and additional language in advertisements for such services. NAAG, however, recommends either a complete ban on 900 services aimed at children under a specific age or the establishment of an identification code which would restrict children's ability to call without parental involvement. However, there is no evidence that the phone companies are technically capable of providing such an identification code.

The Committee has concluded that the only way to protect children from the solicitations made by 900 service providers until they reach an age where they can evaluate these services and the sales appear is to prohibit noneducational 900 services aimed at children under 12 years of age and prohibit advertisements for noneducational service aimed at children under 12 years of age.

For the past 25 years, Federal policymakers have discussed the obligations of information service providers to protect children. The FCC's restrictions on television advertisements aimed at children have a similar basis and rationale as the restrictions in the reported bill. As far back as 1960, the FCC decided to include children as

one of the groups whose programming needs had to be met by television broadcasters. *See, Report and Statement of Policy Re: Programming,* 20 RR 1901 (1960). Over a decade later, in 1974, the FCC instituted a "wide ranging inquiry into children's programming and advertising practices." *See, Children's Television Report and Policy Statement,* 50 FCC 2d 1 (1974) (*1974 Report*), *aff'd, Action for Children's Television* v. *FCC,* 564 F.2d 458 (D.C. Cir. 1977) (*ACT* v. *FCC*). The FCC received comments from more than 100,000 citizens. In addition, the FCC conducted 3 days of panel discussions and 3 days of oral arguments involving a wide range of interested parties. The *1974 Report* narrowed its focus to two issues: limitations on commercial practices; and the need to provide educational and informational programming.

Concerning commercial practices, the FCC concluded that:

> It is a matter of common understanding that, because of their youth and inexperience, children are far more trusting and vulnerable to commercial "pitches" than adults. There is, in addition, evidence that children cannot distinguish conceptually between programming and advertising; they do not understand that the purpose of a commercial is to sell a product.

Id. at 11. *See also,* Report of the Surgeon General, *Television and Growing Up: The Impact of Televised Violence,* Vol. IV at 469, 474 (1970). The FCC also recognized that "[s]ince children watch television long before they can read, television provides advertisers access to a younger and more impressionable age group than can be reached through any other medium." *Id.* at 11, *citing Capital Broadcasting Co.* v. *Mitchell,* 333 F.Supp. 582, 584 (1971), *aff'd* 405 U.S. (1972). In sum, the FCC concluded that "there is a serious basis for concern about overcommercialization on programs designed for children." *Id.* at 12.

Recend studies of the impact of commercial matter on children have reached the same conclusions as the FCC's *1974 Report* and Children's Television Task Force Report—young children have a difficult time distinguishing commercials from programming. *See,* Comments of the American Psychological Association in *Revision of Programming and Commercialization Policies,* FCC Docket 83-670, filed February 1988.

The power of Congress to regulate programming aimed at children is well-established, even where the exercise of such power over adults would be prohibited by the First Amendment. In *FCC* v. *Pacifica Foundation,* 438 U.S. 726, 749 (1978), the Court stated:

> We held in *Ginsberg* v. *New York,* 390 U.S. 629, that the government's interest in the "well-being of its youth" and in supporting "parents' claim to authority in their household" justified the regulation of otherwise protected expression.

Recognition that children are a unique and special concern of the State encompasses all media. State action aimed at protecting children has repeatedly overcome First Amendment-premised attacks, whether the regulation concerned written work, cinematography, radio, or television. Government has a right to "adopt more stringent controls on communicative materials available to youths than on those available to adults." *Erznoznik* v. *Jacksonville,* 422 U.S.

205, 212; *See, Ginsberg* v. *New York,* 390 U.S. 629, 636–41 (1968); *Miller* v. *California,* 413 U.S. 15 (1973). This results from the fact that "a child * * * is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantee." *Ginsberg* v. *New York,* 390 U.S. at 649–650, (Stewart, J., concurring in result). *See also, Renton* v. *Playtime Theaters, Inc.,* 475 U.S. 41 (1986).

More recently, in the 1987 decision in *ACT* v. *FCC,* 821 F.2d 741, the U.S. Court of Appeals for the D.C. Circuit acknowledged that "throughout its examination of children's television, the FCC has been sensitive to the limits imposed by the First Amendment on its regulatory efforts." *Id.* at 731, n. 1. The Court referred to the FCC's *1974 Report,* 50 FCC 2d at 3, citing *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367, 390; and 96 FCC 2d, 634, 652 (1984). The Court continued by stating that "[e]arly on in its efforts with respect to children's television, the Commission carefully emphasized that '[a]lthough the unique nature of the broadcasting medium may justify some differences in the First Amendment standard applied to it, it is clear that any regulation of programming must be reconciled with free speech consideration.' " *ACT* v. *FCC,* 821 F. 2d 741, 744, n. 1.

Regulation which particularly limits the amount of commercial matter broadcast in a program aimed at a children's audience clearly meets established constitutional standards. Commercial speech is susceptible to more stringent governmental limits and regulation because "the Constitution accords a lesser protection to commercial speech than to other constitutionally guaranteed expression." *Central Hudson Gas* v. *Public Service Commission,* 447 U.S. 557, 563 (1980) (Central Hudson), citing 436 U.S. 447 at 456–7.

Central Hudson set forth a three-prong test for determining the constitutionality of limitations on commercial speech. 447 U.S. at 566. Assuming commercial speech concerns lawful activity and is not misleading, (1) there must be a substantial governmental interest served by the restriction; (2) the restriction must directly advance that governmental interest; and (3) the restrictions must be no more extensive than necessary to serve that governmental interest.

A proposal to prohibit the 900 services aimed at children under 12 years of age fully meets this three-part test. The "substantial government interest" sought to be protected by such legislation was well stated by Judge Starr in *ACT* v. *FCC,* 821 F.2d 741, 743, where he pointed out the FCC's own policy statement that young children could not distinguish conceptually between programming and advertising, and that guidelines on the permissible level of commercialization are a recognition of the vulnerability of children to commercial exploitation. This recognition is by no means new or unique. It was acknowledged by the broadcast industry itself during the period of self-regulation under the National Association of Broadcasters code. Most importantly, it was acknowledged in the FCC's *1974 Report.* Thus, the record, including leading authorities, establishes that failure to create and maintain proper guidelines would allow irresponsibly our children to become the captive audience of advertisers.

Similarly, the proposed congressional restriction meets the second *Central Hudson* test in that it directly advances a governmental interest. The governmental interest in this case, as was recognized in the FCC's *1974 Report*, is that children should not be overly or excessively exposed to commercialization because of their youth and limited ability to understand advertising concepts. Moreover, this provision is designed to protect parents from incurring expenses for calls made by children who may not understand that the calls cost money. As the FTC pointed out in its comments filed with the FCC: "Younger children may not fully understand transaction costs, particularly costs that change with time." Comments at p. 34. Moreover, current technology does not permit the telephone companies to block selectively specific numbers. As a result, parents would have to block access to all 900 numbers to ensure that children under 12 years of age do not call. In fact, in some communities, blocking is not yet available for calls to any services. A proposal which seeks to limit the amount of commercial exposure is precisely the type of focused governmental action required by the second prong of the *Central Hudson* test.

Finally, the reported bill is no more extensive than necessary to serve the affected governmental interest because it is narrowly focused and specifically limited in application to noneducational pay-per-call services aimed at young children. This ban does not extend to educational services to ensure that children have access to such programs. The Committee recognizes that some of these programs are provided through schools, and therefore the children's use of these programs is supervised. It should also be noted that the legislation does not impose any penalties in the event that a child does call a 900 service. Thus, it does not burden the information service provider with the requirement to ensure that children do not call such services. In addition, it will permit children to call 900 services with parental supervision. This legislation merely prohibits information service providers from offering or advertising noneducational programs aimed at children under 12 years of age.

The narrow and relatively nonintrusive nature of this regulation directed by the reported bill is underscored by comparison with restrictions on other types of commercial advertising. For example, the Supreme Court has validated prohibitions against the advertising of products or services such as cigarettes, alcohol, and gambling to any age group, which in themselves are legal, but which are nevertheless recognized as harmful. *See, Posadas de Puerto Rico Associates* v. *Tourism Co.*, 106 S. Ct. 2968 (1986); *Capitol Broadcasting Co.* v. *Mitchell*, 333 F.Supp. 582 (1971); *Oklahoma Telecasters Ass'n* v. *Crisp*, 699 F.2d 490 (10th Cir. 1983), *rev'd on other grounds*, 467 U.S. 691 (1984). The limits set forth in the reported bill are far less restrictive than the bans on cigarette, alcohol, and gambling advertising which the courts repeatedly have upheld. Congress has determined that advertising for noneducational 900 services aimed at children under 12 years of age can be harmful to the children. Advertisements for such services certainly can be limited to children over a certain age, in this case 12.

The FCC's position of not restricting 900 services aimed at children under 12 years of age is based on the faulty assumption that the marketplace will work to keep the number of services aimed at

children at a reasonable level. The FCC maintains that a child will feel that he or she should not call a program because the advertisement says not to call without parental permission. The Committee is concerned that such warnings will encourage, rather than discourage children from calling such services. Moreover, since young children do not have the cognitive ability to distinguish commercial matter from program matter, they cannot react negatively to overcommercialization of programming.

FCC PROCEEDING ON 900 SERVICES

On March 25, 1991, the FCC issued a notice of proposed rulemaking to consider restrictions on 900 services. *See, Notice of Proposed Rulemaking (Policies and Rules Concerning Interstate 900 Telecommunications Services),* CC Docket No. 91-65, March 25, 1991. On September 26, 1991, the FCC adopted rules governing the provision of all interstate "pay-per-call" services. *See* News Release, Report No. DC-1954, Sept. 26, 1991. The FCC rules will:

· require that all 900 services, except those with costs of $2.00 or less for a flat-rate call, provide a preamble stating the cost of the call, including total price per call, where practicable, the name of the information provider, product, or service which the caller will receive for the fee;

· require that the preamble for 900 services aimed at children under 18 years of age include special warnings;

· require that consumers have the opportunity to hang up, without charge, after receiving the disclosure information;

· require the local phone companies to give each subscriber the option to block all calls to 900/700 numbers from each phone;

· prohibit local telephone and long distance companies from disconnecting a subscriber's telephone service for failure to pay interstate 900 number charges; and

· prohibit carriers from providing transmission services to any 900 service that uses tones generated in broadcast advertising to complete a call to a 900 service.

NAAG REPORT

NAAG believes that the FCC proposal does not go far enough to protect the consumer from 900 number problems. NAAG is especially concerned because many consumers are completely unaware of the charges associated with 900 numbers. The NAAG Report thus proposed several legislative changes that go beyond the proposals of the FCC. These changes include:

· barring telephone companies from carrying 900 services directed at children;

· requiring all 900 service advertisements to give the price of the call, the nature of the service, and the identity of the provider;

· liberal bill adjustment processes and refund procedures;

· special restrictions on job lines, credit lines, political or charitable fundraising, and "sweepstakes"; and

· requiring the telephone company to provide a toll-free telephone number for consumers to call to contest any charge for a 900 number.

FEDERAL TRADE COMMISSION

The FTC has jurisdiction over consumer fraud, together with the U.S. Postal Service (mail fraud) and the Secret Service (credit card and consumer fraud). The FTC indicates that in 1987 it received approximately 3,100 complaints concerning telemarketing fraud and about 269 different firms were involved. The number of complaints received by the FTC has grown by about 20 percent each year. In 1987 the FTC and NAAG established an automated data bank on telemarketing fraud, to use their collective data to pursue the most serious violators.

The current FTC Chairman, Janet Steiger, has indicated an intention to pursue more aggressively telemarketing fraud, and to work cooperatively with the States in this effort. Some States (e.g., California and Nevada) have enacted telemarketing fraud legislation, and other States (e.g., North Carolina) have been aggressive in pursuing the violators.

CONCLUSION

These increased enforcement activities concerning consumer fraud do not solve all the problems with 900 services. Enforcement activities take place after the fact; they do not provide consumers with information necessary to protect themselves prior to calling a 900 service. In addition, the level of enforcement varies from State to State, and 900 service providers have avoided law enforcement by relocating. Moreover, the States only have jurisdiction over intrastate 900 services, and many 900 services involve interstate calls. The FCC, rather than the States, has jurisdiction over interstate calls.

Nor does the FCC proceeding address adequately the concerns of the Committee. The FCC's rules do not go far enough to ensure that consumers are protected and informed. Thus, the Committee believes that there is a need for legislation at the Federal level to establish uniform standards for the industry, to ensure that consumers have sufficient information prior to calling 900 services, and to provide the FTC, FCC, and the States with the authority needed to protect consumers interests.

LEGISLATIVE HISTORY

On February 21, 1991, Senator McCain introduced S. 471, the 900 Services Consumer Protection Act of 1991, and on April 25, 1991, Senator Inouye introduced S. 1166, the Telephone Consumer Assistance Act. Both of these bills were designed to establish regulations and oversight of the pay-per-call industry. A Communications Subcommittee hearing was held on these bills on July 16, 1991. Following the hearing, Senators Inouye and McCain merged their two bills into one and introduced S. 1579, the 900 Services Consumer Protection Act of 1991, which has the following cosponsors on the committee; Senators Hollings, Danforth, Gore, Ford, Bryan, Pressler and Burns. On July 30, 1991, in open executive session the Committee ordered S. 1579 reported favorably without objection, subject to technical amendment.

SUMMARY OF MAJOR PROVISIONS

The reported bill would:

(1) require that 900 services provide a preamble stating the cost of the call, all per-call charges, and the type of service which the caller will receive for the fee;

(2) require the local phone companies to give each subscriber the option to block all calls to 900/700 numbers from each phone;

(3) prohibit local telephone companies from disconnecting a subscriber's telephone service for failure to pay interstate 900 number charges;

(4) prohibit the broadcast of automatic dial tones in radio and television advertisements and ban 900 services aimed at children under 12 years of age;

(5) require that telephone companies include in any bills sent to subscribers information describing the rates charged for 900/700 numbers, the type of service called, and the rights and obligations of callers and the carrier;

(6) require full and clear disclosure of the rates for these calls in all advertisements;

(7) prohibit use of 800 numbers (free calls) that automatically connect subscribers to 900/700 numbers (for which the caller is charged);

(8) require all telephone carriers that contract with 900 service providers to make available on request the name, business address, and phone number of 900 service providers carried by that carrier, a short description of the 900 service provided, the access numbers for the 900 services, and the maximum charges for the 900 service;

(9) give the FCC, the FTC, and the States the authority to enforce the provisions of this legislation;

(10) require the FTC to conduct a study concerning use of callers' numbers, without their knowledge, by telemarketing services; and

(11) require the FCC to conduct a study into the need for regulations requiring automatic disconnection of services after one full cycle, or of interactive programs if there is no activity for some period of time; and the need for beep tones to remind callers that they are being charged for interactive calls.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget act of 1974, the committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 9, 1991.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1579, the 900 Services Consumer Protection Act of 1991, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on July 30, 1991. CBO estimates that im-

plementation of S. 1579 would cost the federal government about $700,000 over the next five years, assuming appropriation of the necessary amounts. Enactment of S. 1579 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

S. 1579 would require the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC) to jointly promulgate regulations governing pay-per-call (900 number) services. CBO estimates that the costs of implementing the bill would be about $200,000 in fiscal year 1992 and decreasing amounts in subsequent years. The costs would be mostly for personnel costs associated with rulemaking and enforcement, shared roughly equally between the FCC and FTC.

The bill, which provides for federal jurisdiction of civil suits brought by state attorneys general, also could result in some increased costs to the federal judiciary. However, any such costs are not likely to be significant.

Enactment of S. 1579 would result in no cost to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John Webb, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

This legislation affects the estimated 1,400 local telephone companies, 200 long-distance telephone companies, and the estimated 5,000 pay-per-call services providers. The Committee expects that the impact of this legislation on the telephone companies will be minimal. This legislation will not affect the number of persons employed by either telephone companies or the 900 service providers.

ECONOMIC IMPACT

The requirements directed by the reported bill on telephone companies and 900 service providers will impose some additional costs on the telephone companies and information service providers. However, the Committee expects that these costs will be insignificant because the telephone companies are already regulated, and many of the telephone companies and 900 service providers are already in compliance with many of the reported bill's requirements. For example, this legislation requires local telephone companies to provide consumers with 900 service blocking where technically feasible. Many of these telephone companies now offer blocking to their consumers. Similarly, this legislation requires that long-distance companies that contract with 900 service providers make information available on request to consumers and government agen-

cies concerning the 900 services that they carry. Again, these companies already have all the information, and many of them routinely make that information available today.

PRIVACY

This legislation will not have an adverse impact on the personal privacy of the individuals affected.

PAPERWORK

Many of the provisions contained in this legislation are the subject of a notice of proposed rulemaking being conducted by the FCC. This legislation will not impose any additional filing obligations on telephone companies or information service providers. However, it will require the FCC and the FTC to adopt some additional regulations and conduct some studies.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section states that the bill's short title is the "900 Services Consumer Protection Act of 1991."

SECTION 2.—FINDINGS

This section includes the following findings.

(1) The pay-per-call industry is a billion dollar industry.

(2) Many pay-per-call businesses provide valuable information, increase consumer choices. and stimulate innovative and responsive services that benefit the public.

(3) Some interstate pay-per-call businesses, however, are engaging misleading and harmful practices.

(4) These improper activities damage the reputation of the entire industry, harming the many reputable businesses in this industry.

(5) Many of these harmful practices are beyond the reach of regulatory agencies and existing legislation.

(6) State regulation cannot impact these businesses because of the nationwides, interstate scope of pay-per-call services.

(7) Federal legislation is needed for proper and orderly regulation of this industry to protect consumers and to allow for growth of the industry. Pay-per-call services are offered on the public switched networks of the interchange carriers. Most calls are interstate, but a percentage of them originate and terminate within the same State, even though the call may have accessed data bases located in another State. Many State legislatures and regulatory bodies have adopted diverse laws or regulations on 900 or pay-per-call services while still others have refrained from taking action, thus resulting in a patchwork of regulation. The Committee believes that greater uniformity in State regulation would foster greater protection for consumers while allowing the industry to evolve Accordingly, the States are encouraged to adopt the uniform standards and practices proposed in this legislation.

SECTION 3.—PURPOSE

The purposes of the legislation are: (1) to require a system of regulation and review of the 900 services industry; and (2) to provide specific oversight, regulatory, and enforcement authority with respect to this industry, to the FCC and the FTC, to give the State attorneys general authority to enforce Federal law and regulations concerning this industry, to afford reasonable protection to consumers, and to assure that violations of Federal law do not occur.

SECTION 4.—DEFINITIONS

This section contains the definitions of terms in the reported bill.

(1) The term "pay-per-call service" is defined to mean any information service provided by telephone where the calling party incurs a charge merely by dialing an information service's access number. The Committee does not intend for this definition to include services where the customer pays by credit card or check. In those situations, the customer knows the charges he or she is incurring, has the opportunity to decline the acceptance of the service or product, and must take affirmative steps to pay for the service or product. In the case of 900 services, where the charges are automatically billed to the caller's telephone number or where the charges are automatically incurred simply by dialing the number, the Committee believes that added protections are necessary. The Committee intends that the FCC and FTC have adequate flexibility in defining the scope of regulations to respond to new technologies and new applications which this legislation may not have anticipated, but which the agencies may determine need regulatory safeguards in order to protect consumers or do not need regulatory safeguards.

(2) The term "common carrier" is defined as having the same meaning as in the Communications Act of 1934 (1934 Act).

(3) The term "information service" excludes any telephone service subject to common carrier regulation by the FCC. It is not the intention of the Committee to include services such as conference calling when such service is provided by a telephone company pursuant to a tariff, or when the rates charged for the telephone service are regulated by the FCC or a State.

(4) The term "provider of pay-per-call service" excludes common carriers that merely transmit such service or provide billing and collection for such services; the FCC is delegated the authority to specify the specific services that are covered by this definition. As with paragraph (3) above, it is not the intention of the Committee to include telephone companies in the definition of "provider of pay-per-call service" when a telephone company is serving only as the carrier of the information service or provider of billing service and does not control the content of the information provided. Should the restriction prohibiting the Bell Operating Companies from providing information services be lifted and the Bell Companies actually provide pay-per-call services (i.e., control the content of information provided to consumers), then the Committee intends that the Bell Companies should be subject to the requirements of the reported bill applicable to pay-per-call service providers.

(5) The term "caller" is defined to mean any person using such service.

(6) The term "State" is defined to mean any State in the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

SECTION 5.—FCC AND FTC REGULATIONS ON PAY-PER-CALL SERVICES

Subsection (a) of this section requires the FCC and FTC, within 120 days after the date of enactment of this legislation, to initiate coordinated rulemaking proceedings to establish a consistent system for oversight and regulation of pay-per-call services. The final rules or regulations issued shall be effective within 1 year of the enactment of this legislation. All rules promulgated by the FTC under this legislation are to be prescribed in accordance with section 553 of title 5, U.S.C.

Subsection (b) provides that the FTC shall adopt rules and regulations which mandate certain standards for pay-per-call services.

(1) These services are to include a preamble in each call disclosing the maximum rate charged, describing the service provided and giving callers the option of hanging up without being charged. To avoid any confusion by consumers as to the costs of calls to 900 services or the type of service for which they will be paying, the Committee believes that each 900 call should be preceded by a preamble containing that information. In addition, should the consumer determine that he or she does not want the service provided or that the cost is too high, the consumer should be able to hang up without incurring any charge. While the bill does not require that 900 service providers tell callers specifically that they can "hang up now without being charged," the Committee expects that the message will make it clear to consumers that if they hang up they will not be charged and that they will be given sufficient time to hang up before charges commence.

There are some limited circumstances under which a preamble may not be necessary or appropriate. For example, preambles may not be necessary if the total cost of the call is a nominal amount, such as $2 or $3. A preamble may not be appropriate where the cost of the call is nominal and the duration of the call is very short. One example is a polling call where the callers are told to call one number for yes and another number for no. Often these calls do not even involve any message. Preambles might not be necessary where a consumer frequently calls the same 900 service program. In that case, it can be presumed that the caller is aware of the cost of the call and should be able to bypass the preamble. However, as the bill provides in a later subsection, any such bypass mechanism should be disabled immediately following a rate increase.

(2) Pay-per-call services are to permit the caller to hang up before charges commence. This provision merely requires that 900 service providers use technology that permits a caller to hang up without incurring any charge after the preamble has been completed.

(3) Pay-per-call services are to ensure that repeat callers are aware of rate increases. This provision requires that when 900 serv-

ices permit frequent callers to bypass the preamble, that the bypass mechanism is to be disengaged for a reasonable period of time after a rate increase. This requirement will ensure that callers know of the rate increase when they place a call.

(4) Pay-per-call services aimed at children under the age of 12, except educational services, are prohibited under this subsection. This provision prohibits 900 service providers from providing programs aimed at children under 12 years of age, unless the service is a bona fide educational service. The Committee believes that children under 12 years of age should be protected from overcommercialization and that, prior to the age of 12, children often do not have the sophistication to recognize the implications of calling 900 services. Moreover, current technology does not permit the telephone companies to block selectively specific numbers. As a result, parents would have to block access to all 900 numbers to ensure that children under 12 years of age do not call. In fact, in some communities, blocking is not yet available for calls to any services.

The FTC has suggested that one way to deal with this concern would be to prohibit telephone companies from billing and collecting for calls to 900 services aimed at young children. The FTC proposal simply would require that the information service provider do the billing and collection itself. While this may deter some information providers from providing services aimed at children, it does not address the Committee's concerns. The Committee believes that young children should not be exposed to such commercial practices until they reach an age when they are able to comprehend the purpose of these services and the associated costs.

The Committee does not intend to prohibit 900 services aimed at general audiences or older children, such as sports lines, just because children may call such services, but rather to prohibit services where it is clear that the service is aimed at children under 12 years of age. For example, one factor that may be considered in determining to whom a service is aimed is the promotion of the service. If it is primarily promoted through advertising aimed at children under the age of 12, then that would indicate a violation of this provision.

There are some educational services aimed at children that parents may want their children to call. The reported bill provides the FCC with the discretion to define educational services.

(5) Pay-per-call services are to prohibit the use of toll-free numbers that automatically connect callers to pay-per-call services for which there is a charge. Some 900 services advertise for consumers to call a toll-free 800 number, but then transfer consumers to a 900 service without telling the consumers that they will be charged for the call. This practice is clearly deceptive, particularly since consumers have come to associate calls to 800 exchanges as free of charge. This provision does not prohibit 900 service providers from using 800 numbers to advertise their 900 services or to give consumers more information about their 900 services, so long as the consumer is not automatically connected to a 900 pay service. In prohibiting such an automatic connection, the Committee does not intend to permit pay-per-call services to advertise an 800 number and then, when a consumer calls, to instruct the consumer, for ex-

ample, to "press 1" and then connect the consumer to a pay-per-call service. In other words, to ensure that no automatic connection takes place, consumers would have to hang up from a call to an 800 number and then redial the 900 service.

Subsection (c) provides that the FCC shall adopt rules and regulations which impose various requirements on common carriers.

(1) Common carriers that contract with pay-per-call service providers must provide, upon request, information concerning those providers services; the access numbers; rates; name, address, and phone number of the service provider; and such other information as the FCC may require. This provision is designed to ensure that consumers, regulators, and law enforcement officials have access to information about 900 service providers.

(2) Common carriers must refrain from disconnecting a subscriber's local and long distance phone service for nonpayment of 900 services. The purpose of this provision is to ensure that telephone users are not deprived of local exchange or long distance service due to failure to pay for calls to 900 services. The Committee does not intend for this provision to be abused by subscribers to avoid payment to a 900 service provider or a telephone company. If a customer has chronic complaints about calls to 900 services, then the phone company, either on its own or at the request of the 900 service provider, can block calls to 900 services from that subscriber's phone.

(3) Common carriers that provide local exchange service must offer the option of blocking a portion of or all 900 services, at no charge, to all subscribers for 60 days after issuance of the FCC rules, and to certain new subscribers, or otherwise at a reasonable fee established by the State regulatory commission. In addition, such carriers must offer where technically and economically feasible the option of presubscribing to or blocking only certain services for a reasonable one-time charge. The Committee recognizes that not all telephone systems have the capability of providing blocking at this time. However, many telephone systems do have the technical capability to make blocking available to their subscribers. While the Committee does not intend that systems without blocking technology should be required by this legislation to install such technology immediately, telephone systems must not delay unreasonably the implementation of blocking.

In contrast, the Committee recognizes that no telephone company has the technology today to permit subscribers to selectively block access to specific 900 services. Accordingly, the Committee recognizes that this option may not be available to subscribers for some time.

(4) Common carriers that provide billing and collection must do the following.

(A) They must give subscribers the option of canceling unauthorized charges or charges incurred through misunderstanding of the 900 service called. The FCC's rules on cancellation of charges may permit partial cancellation where appropriate. In cases where part of the charge is reasonably assessed, the rules may direct cancellation only of additional amounts.

The purpose of this provision is to ensure that telephone subscribers are not forced to pay for calls to 900 services that were not

authorized by the subscriber or where the subscriber did not understand the nature of the service or the charges that were being incurred. A misunderstanding under this subsection is meant to encompass circumstances where the advertising or other promotional activities of the 900 service provider gave the consumer a false or misleading expectation of the service to be provided or the charges to be assessed. The FCC may apply a rule of reasonableness in establishing rules concerning when cancellation of charges for lack of authorization or misunderstanding is appropriate.

The Committee expects that telephone companies will be required to forgive charges under the two circumstances set forth in the legislation. (However, the Committee notes that this bill does not prohibit the telephone companies from forgiving charges in other circumstances when they consider forgiveness appropriate.) The Committee does not intend that 900 charges be forgiven routinely for the same customer. For example, if a subscriber informs the phone company that he or she did not realize that he or she was paying a per-minute charge for a call to a 900 service, the telephone company can be required to forgive that charge. If the same subscriber complains or claims not to have understood that charges would result from calls to 900 services in more than one billing period, then the Committee does not intend that the phone company be required to forgive those calls made during subsequent billing periods, except in unusual circumstances. The Committee also intends that if one customer has chronic complaints about calls to 900 services, then the telephone company can block calls to 900 services from that subscriber's telephone.

The Committee does not endorse consumer fraud nor does it intend by this legislation to inadvertently encourage consumer fraud in this area. Therefore, it is the intention of the Committee that the FCC craft careful rules to limit potential abuses of this or any provision in the bill.

(B) These common carriers must inform subscribers of their rights and blocking options. This provision requires that telephone companies that bill and collect for 900 service providers, for example, notify all telephone customers that they can block access to 900 services. This disclosure statement must set forth the customer's rights and obligations with respect to the use of such services and the payments required for such services, and the applicable blocking options. This legislation does not require that this information be included in the customer phone bill—it can be provided in a separate mailing. This disclosure statement must be provided to all telephone subscribers on an annual basis at least.

(C) These common carriers must separately identify in consumer bills the rates charged, the date, time, duration of calls, and the type of service. This provision does not require a separate page of a subscriber's bill for 900 charges. Rather, the provisions of this section can be satisfied by separating by a physical space the pay-per-call charges from local and long distance charges. Also, the requirement to specify the type of service can be met by a descriptor, or a limited character description phrase, rather than a multiword description of the service.

(D) They must verify the tax-exempt status of 900 services soliciting charitable contributions. The term "collection and distribution

of charges" as used in this legislation is sometimes referred to as "billing and collection". The requirement for obtaining proof of tax-exempt status is not applicable where funds are solicited for nontax-exempt purposes and where that fact is made clear to consumers prior to their incurring any financial obligations. The Committee expects that the burden of ascertaining when a service is asserting that it is tax exempt should not be borne by the common carrier. The Committee expects that the information service provider will notify the common carrier any time it offers a program seeking donation for a tax-exempt entity.

(E) These common carriers shall have the right to recover costs of compliance with this section. The Committee recognizes that telephone companies will incur some additional costs in complying with the provisions of this legislation. Accordingly, the Committee intends that telephone companies have the ability to recover these additional costs from the 900 service providers and not from ratepayers who do not use 900 services.

(F) They must stop billing for pay-per call services when the caller hangs up. When calls are placed to a 900 service and the caller is billed on a per minute or time basis, billing should cease when the caller hangs up the telephone. The Committee recognizes that it takes time for the telephone system to recognize that a caller has concluded a call; however, billing should cease within seconds, not minutes.

(G) These common carriers must require that pay-per call services be offered only via a limited number of telephone number prefixes. When adopting rules to restrict pay-per-call services to certain telephone number prefixes, the FCC may limit such requirements to pay-per-call services that do not require presubscription. Presubscribed service, or services purchased by commercial credit cards, may be exempted from the limitations of these rules.

Subsection (d) requires the FTC to adopt rules and regulations for advertisements of 900 services which shall:

(1) require all advertisements to disclose the rates charged, and any other information deemed appropriate;

(2) require all print and television advertisements to display clearly the rates for calls to pay-per-call services;

(3) prohibit the broadcast of electronic tones which can dial automatically a pay-per-call service;

(4) require disclosure of rates in any telephone message soliciting calls; and

(5) prohibit the use of toll-free numbers which connect automatically callers to a pay-per-call service.

Subsection (e) sets forth other matters the FCC and FTC shall consider in their rulemakings.

(1) The FCC is to consider whether it should adopt rules requiring pay-per-call services to disconnect automatically a call after a full cycle and/or interactive programs if no activity occurs within a certain reasonable time period, and requiring a signaling system to alert callers to the passage of time. Callers to gab or chat lines, which are offered on an open-ended basis with no moderator or specific subject matter, are particularly vulnerable to accumulating high charges by being unaware of the passage of time. The Committee believes that the FCC in particular, should consider whether

there is a need for some mechanism to remind callers of the passage of time when they are making such calls. However, the Committee also recognizes that there are entertainment, informational, and educational programs that are also offered on a live interactive group basis. Such programs differ significantly from chat lines by having a scheduled start and completion, being led by a moderator and having a specific discussion topic. These differences among the various live interactive group programs should be recognized by the FCC in its study.

(2) The FTC is to consider whether it should permit exemptions for services to which customers presubscribe and for services offered at nominal rates. In considering presubscription services, the FTC may consider exempting services aimed at children under the age of 12, where a child's parents must presubscribe in writing to such services. The prices for 900 services vary significantly. In some instances, such as inexpensive polling applications, a preamble may exceed the length of the program itself. The FCC may determine that nominal program charges need not trigger the preamble requirement. The Committee considers calls that cost less than $1 per minute or $2 to $3 total per call as a reasonable threshold to distinguish nominal and non-nominal charges.

Subsection (f) clarifies that this legislation shall not affect the dial-a-porn provisions contained in section 223 of the 1934 Act. The dial-a-porn (sexually explicit services or adult services) issue is one that Congress has already considered. Congress already has barred all "obscene" communications over the telephone lines, and this ban has been upheld by the courts. In 1989, Congress passed legislation which requires telephone consumers to "presubscribe" if they want to be able to access "indecent" (sexually explicit) messages over the telephone. Under this law, consumers are only able to dial these numbers if they file a written request with their local telephone company to have such access.

Last year, two Federal courts (in California and New York) stayed the implementation of this law to consider its constitutionality. Recently, however, both the California and New York courts ruled that the law was constitutional. *Information Providers' Coalition for the Defense of the First Amendment* v. *FCC*, No. 90-70379 (U.S. Court of Appeals, 9th Cir., March 21, 1991); *Dial Information Services Corporation of New York, et al.* v. *United States*, No. 1102 (Docket No. 90-6289) (U.S. Court of Appeals, July 15, 1991).

SECTION 6.—FEDERAL AGENCY ENFORCEMENT

Subsection (a) provides the FCC with the same enforcement authority for this legislation that it has under title V of the 1934 Act. Thus any violation of this legislation shall be subject to the penalty provisions of that Act, which now include criminal fines up to $500 per day, per offense; forfeiture penalties for common carriers not to exceed $100,000 per violation, per day; and penalties not to exceed $10,000 per violation for other violators.

Subsection (b) provides that any violation of FTC rules and regulations pursuant to this legislation shall be subject to the penalties and remedies for a violation of section 18 of the FTC Act. The FTC shall prevent violations in the same way and with the same au-

thority as though the FTC Act were incorporated into this legislation, and violators of this legislation shall likewise be subject to penalties and entitled to the privileges and immunities under the FTC Act.

SECTION 7.—ACTIONS BY STATE ATTORNEYS GENERAL

Subsection (a) authorizes a State attorney general to bring civil actions on behalf of that State's citizens for violations of the FTC rules or regulations adopted pursuant to this legislation to enjoin violative acts, to seek damages on behalf of State residents, to enforce compliance, and to obtain such other relief as appropriate. The Committee does not intend by this enactment to alter the traditional regulatory balance between the FTC and FCC and the States.

Under subsection (b), exclusive jurisdiction for such actions is given to the U.S. district court. Under subsection (c), state attorneys general are required to give written notice to the FTC prior to filing civil actions, unless such prior notice is not feasible, in which case notice upon instituting such action is sufficient. The FTC is given the right to intervene in any State's civil action and file appeals.

Subsection (d) specifies that all civil actions brought under this section must be filed in a U.S. district court wherein the defendant is found, lives, or transacts business, or wherein the violation occurred or is occurring. Subsection (e) specifies that this legislation does not restrict the investigatory powers of State attorneys general in bringing actions under this section.

Subsection (f) provides that States still permitted to bring actions for violation of any general State civil or criminal antifraud statutes. However, under subsection (g), States are prohibited from instituting actions for violations of rules or regulations under this legislation against a defendant already subject to a pending FTC civil action for similar violations.

Subsection (h) provides that the term "attorney general" is defined to mean the chief legal officer of a State.

SECTION 8.—STUDY OF THE USE OF CALLERS' TELEPHONE NUMBERS

This section requires the FTC to conduct a study of the compilation by pay-per-call services providers of lists of callers' telephone numbers, and the extent to which such numbers are obtained with or without the callers' consent. The study is to identify the methods by which callers could be permitted to grant or withhold such consent. The FTC is required to submit its findings to the Congress within 1 year of enactment, and include recommendations for administrative or legislative changes to prevent abuses in the acquisition and use, by pay-per-call providers, of callers' telephone numbers if such abuses are identified in this study.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

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